inequitable for the plaintiff to recover from the defendant a sum in excess of that to which the plaintiff is entitled. Secondly, to put the defendant in the position of having to recover the balance, if I may so put it, from the plaintiff via Heng Moh & Co. by way of separate proceedings would be putting the defendant, and for that matter Heng Moh & Co., to wholly unnecessary expense. Accordingly in my view the principal sum which the plaintiff is entitled to recover is the total of the two cheques, $31,840, less the sum of $5,252.41, that is to say, $26,587.59.

There will accordingly be judgment for the plaintiff for the principal sum of $26,587.59, interest at 5% per annum from the 22nd November, 1957, to the 31st March, 1958, on the sum of $31,840, interest at 5% per annum from the 1st April, 1958, to the 29th September, 1959, on the sum of $26,587.59 and interest on the sum of $26,587.59 at the rate of 5% per annum from the 30th September, 1959 to date, and the defendant will pay the plaintiff's costs.

Judgment for the plaintiff.

Solicitors: *Presgrave & Matthews; Braddell & Ramani.*

SYED AHMAD v. CHAN HON THIM

[O.C.J. (Neal J.) April 21, 1961]

[Ipoh — Civil Appeal No. 3 of 1961]

Landlord and Tenant — Reassessment of rent — Control of Rent Ordinance, 1956, s.16 — Refusal of Board to reassess — Application heard without service of notice on all sub-tenants — Whether valid hearing — Whether Rent Assessment Board may refuse to reassess.

Where an application is made under section 16 of the Control of Rent Ordinance, 1956, to the Rent Assessment Board to fix rental paid by sub-tenants to a tenant, the Board must proceed to assess the rental to be paid by sub-tenants in accordance with the provisions of the Ordinance.

On such an application all sub-tenants must be served in accordance with the mandatory provisions of the statute. As the statute is not clear on whom falls the responsibility of serving the notices on the sub-tenants, the ultimate responsibility rests on the Rent Assessment Board.

CIVIL APPEAL.

B. K. Das for the appellant.

Respondent in person.

Neal J. (delivering oral judgment): This is an appeal by a sub-tenant against the refusal of the Rent Assessment Board, Ipoh, to make an order on an application by the appellant under section 16 of the Control of Rent Ordinance, 1956, to fix the rental paid by the appellant, who is a sub-tenant of the premises, to the respondent who is a head-tenant. I stopped Mr. Das in the course of his argument because, in my opinion, this Court is bound to order a retrial before the Rent Assessment Board on two grounds: firstly, the other sub-tenants had not been served (this is clear from the record of the proceedings) in accordance with the mandatory provisions of the statute. Secondly, the statute itself, in my opinion, clearly provides that once an application is made under section 16 the Rent Assessment Board will proceed to assess as between all of the sub-tenants the rental to be paid by each, that rental being a proportion of and not exceeding the rental paid by the head-tenant plus 10 per cent. In arriving at the proportion to be paid allowance will have to be made as in this case in respect of furniture, if any, supplied pursuant to the contract, and any other services supplied pursuant to the contract. The words, "pursuant to the contract," require emphasis in view of the contention apparently put forward before the Rent Assessment Board that an allowance must be made in respect of other electricity provided. The contract between the parties is, to my mind, clear. It is a hiring of part of the premises plus certain furniture not enumerated at the stipulated rent. Under the contract there was nothing to have stopped the respondent from recovering. if he is able to prove the quantum, a proportion of the electricity bill from the present appellant, but it is not included in the contract rental.

To assist the Board in re-hearing this application let me repeat: that it is not a question of whether or not the agreement entered into between the parties is a reasonable one or not; it is a question once an application is made by a sub-tenant of assessing (after notice) as between all of the sub-tenants after making allowance for any part occupied by the respondent, the total rental paid to the landlord plus 10 per cent. To these figures in each case can properly be added an assessment in respect of any furniture supplied as in this case by the head-tenant in accordance with the terms of the contract between the parties. There will be a retrial of the present application.

As regards the question of costs, in my opinion, this is an appropriate matter where the costs should be reserved until I am aware of the ultimate result of these proceedings.

I wish in conclusion to add only one thing: the statute is not clear on whom it falls the responsibility of serving the notices on the sub-tenants and, in that connection, I can only say that since it is a condition precedent to the right of the Rent Assessment Board to make any order in default of the steps having been taken, the ultimate responsibility will rest on the Rent Assessment Board.

The deposit in Court is to be paid out to the appellant.

Retrial ordered.

Solicitors: *Das & Co.*